

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID R. RODRIGUEZ,

Plaintiff,

-v-

No. 10-CV-196

MR. SWEENEY, Sergeant, Barehill Correctional Facility;
MR. WALKER, Sergeant, Barehill Correctional Facility;
MR. BELLROSE, C.O., Barehill Correctional Facility; and
MR. RADNODE, C.O., Barehill Correctional Facility,

Defendants.

APPEARANCES:

OF COUNSEL:

DAVID R. RODRIGUEZ
Plaintiff Pro Se
07-A-2529
Auburn Correctional Facility
P.O. Box 618
Auburn, NY 13021¹

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DAVID L. COCHRAN, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

¹ This is plaintiff's last known address. Mail sent to plaintiff at this address was returned undeliverable on July 30, 2012, and again on September 7, 2012. ECF Nos. 59, 61.

DECISION and ORDER

Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On February 10, 2012, the Honorable David R. Homer,² United States Magistrate Judge, advised, by Report-Recommendation that defendants' unopposed motion for summary judgment for failure to exhaust administrative remedies be granted in part and denied in part. Defendants timely filed objections to the Report-Recommendation.

Based upon a de novo review, the Report-Recommendation is accepted. See 28 U.S.C. § 636(b)(1).

Therefore, it is

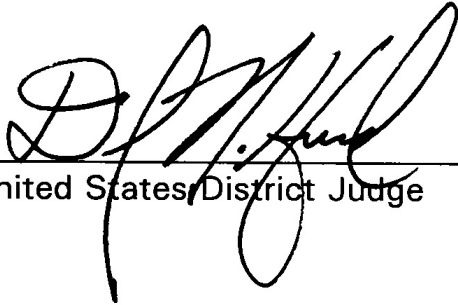
ORDERED that

1. Defendants' motion for summary judgment is DENIED as to Rodriguez' claims regarding the assault, failure to protect, failure to provide medical treatment, and subsequent retaliatory threats and harassment at Bare Hill Correctional Facility; and

2. Defendants' motion for summary judgment is GRANTED with respect to the third, formal grievance regarding the retaliatory threats and harassment at Clinton Correctional Facility and that claim is DISMISSED.

IT IS SO ORDERED.

Dated: April 8, 2013
Utica, New York.


United States District Judge

² On September 4, 2012, this case was reassigned to United States Magistrate Judge Christian F. Hummel. ECF No. 60.